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AMENDED IN SENATE MARCH 22, 2006
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AMENDED IN SENATE JUNE 13, 2005

Senate Constitutional Amendment

No. 3

**Introduced by Senators Lowenthal and Ashburn
(Principal coauthor: Senator Simitian)**

(Principal coauthor: Assembly Member Richman)

(Coauthors: Senators Alquist, Kehoe, and Soto)

*(Coauthors: Assembly Members Canciamilla, Leno, Nation, and
Wolk)*

December 6, 2004

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing and adding Article XXI thereof, relating to redistricting.

LEGISLATIVE COUNSEL'S DIGEST

SCA 3, as amended, Lowenthal. Elections: redistricting.

Existing provisions of the California Constitution require that each member of the Senate, Assembly, Congress, and the State Board of Equalization be elected from a single-member district.

This measure would require that each of the 40 Senate districts be divided into 2 Assembly districts.

Existing provisions of the California Constitution require the Legislature, in the year following the year in which the federal census is taken at the beginning of each decade, to adjust the boundary lines of the state Senate, Assembly, congressional, and State Board of Equalization districts in accordance with specified standards.

This measure would delete this provision, and would instead create a procedure for the appointment of an independent redistricting commission, composed of 11 members, that would be charged with establishing Senate, Assembly, congressional, and State Board of Equalization districts of equal population ~~in a grid-like pattern~~ across the state, adjusted as necessary to accommodate various goals, as specified.

This measure would provide that certain records of the redistricting commission are public records.

This measure would grant the California Supreme Court original and exclusive jurisdiction over all challenges to a redistricting plan adopted by the commission, and would authorize an affected elector to file a petition for a writ of mandate or prohibition within 45 days after the commission certified the plan to the Secretary of State. The California Supreme Court would be required to act expeditiously on the petition. If the plan is held to be unconstitutional, this measure would require the court to provide relief as it deems appropriate.

This measure would, among other things, require the establishment of a pool of ~~25~~ 50 candidates for appointment to the commission, as nominated by a panel of 10 retired judges of the Court of Appeal, would require the selection and appointment of the 11 commission members from this pool according to a specified procedure, and would provide for the filling vacancies on the commission.

~~This measure would require the Department of Finance to submit to the Legislature a recommendation for the Governor in 2009, and annually thereafter, to include in the Governor's Budget submitted to the Legislature an amount of funding sufficient to meet the estimated redistricting expenses, to be appropriated by the Legislature by majority vote and would require the Legislature to make the necessary appropriation in the annual Budget Bill. It would authorize the commission to contract and to hire staff and consultants, including legal representation, for purposes of this measure. It would provide~~

that commissioners are eligible for reimbursement of expenses pursuant to law.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring,* That the
2 Legislature of the State of California at its 2005–06 Regular
3 Session commencing on the sixth day of December 2004,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California that the
6 Constitution of the State be amended as follows:

7 First—That Article XXI thereof is repealed.

8 Second—That Article XXI is added thereto, to read:

9
10 ARTICLE XXI

11 Reapportionment of Senate, Assembly, Congressional, and
12 State Board of Equalization Districts
13

14 SECTION 1. (a) Each member of the Senate, Assembly,
15 Congress, and the State Board of Equalization shall be elected
16 from a single-member district. The territory of each Senate
17 district established pursuant to this section shall be divided into
18 two Assembly districts.

19 (b) By February 28 of each year ending in the number one, the
20 Independent Redistricting Commission shall be established to
21 provide for the redistricting of Senate, Assembly, congressional,
22 and State Board of Equalization districts. As used in this article,
23 “commission” means the Independent Redistricting Commission.

24 (c) The commission shall consist of 11 members and all of the
25 following shall apply:

26 (1) No more than four members of the commission may be
27 members of the same political party.

28 (2) Of the eight commission members appointed pursuant to
29 subdivisions (b) and (c) of Section 2, no two or more may reside
30 in the same county.

31 (3) Each commission member shall be a registered California
32 voter who has been continuously registered with the same
33 political party, or has been registered as unaffiliated with a
34 political party, for three or more years immediately preceding
35 appointment.

(4) Each commission member shall commit to applying this article in an honest, independent, and impartial fashion and to upholding public confidence in the integrity of the redistricting process.

(d) (1) Within the three years immediately preceding appointment, a commission member may not have done either of the following:

(A) Been appointed to, elected to, or have been a candidate for any other public office.

(B) Served as an officer of a political party, a registered ~~paid~~ lobbyist, or an officer of a candidate's campaign committee.

(2) Legislative and congressional staff and consultants, persons under a contract with the Legislature, and any person with a financial or family relationship with the Governor, a Member of the Legislature, a Member of Congress, or a member of the State Board of Equalization, are not eligible to serve as members of the commission.

(3) A member of the commission shall be ineligible, during his or her term of office, and for three years thereafter, to hold public office in this State or to register as a ~~paid~~ lobbyist.

SEC. 2. (a) (1) A panel of 10 retired judges of the Court of Appeal, appointed by the Judicial Council, shall nominate candidates for appointment to the commission.

(2) *Of the 10 panelists, 5 shall be registered with each of the two largest political parties in California based on party registration.*

(3) *Each panelist shall be a registered voter in this State who has been continuously registered with the same political party for three or more years immediately preceding his or her appointment.*

~~(2)~~

(4) By January 8 of each year ending in the number one, the panel shall establish a pool of qualified persons who are willing to serve on the commission, *and submit a list of the names of those persons to the President pro Tempore of the Senate, the minority floor leader of the Senate, the Speaker of the Assembly, and the minority floor leader of the Assembly.*

~~(3)~~

(5) The pool of candidates shall consist of ~~25~~ 50 nominees, with ~~10~~ 19 nominees from each of the two largest political parties

1 in California based on party registration, and ~~5~~ 12 who are not
2 registered with either of the two largest political parties in this
3 State.

4 ~~(4)~~

5 (6) The panel shall make every effort to ensure that the pool of
6 candidates is representative of both genders and this State's
7 racial, ethnic, and cultural diversity.

8 (b) (1) No later than January 31 of each year ending in the
9 ~~number one, the Speaker of the Assembly shall make two~~
10 ~~appointments to the commission from the pool of nominees,~~
11 ~~followed by two appointments from the pool made in turn by~~
12 ~~each of the following:~~

13 ~~(A) The minority floor leader of the Assembly.~~

14 ~~(B) The President pro Tempore of the Senate.~~

15 ~~(C) The minority floor leader of the Senate.~~

16 ~~—(2) Each official shall have a seven-day period in which to~~
17 ~~make an appointment. If the appointment by the Speaker of the~~
18 ~~Assembly is not made by January 31, or any of the successive~~
19 ~~appointments is not made within a period of seven days~~
20 ~~following the deadline for the preceding appointment, that~~
21 ~~number one, the President pro Tempore of the Senate, the~~
22 ~~minority floor leader of the Senate, the Speaker of the Assembly~~
23 ~~and the minority floor leader of the Assembly may each strike~~
24 ~~from the pool of candidates up to two candidates who are~~
25 ~~registered with a political party, other than the political party of~~
26 ~~that legislative officer or leader, that is one of the two largest~~
27 ~~political parties in California based on party registration. Each~~
28 ~~legislative officer or leader shall, in the following order, appoint~~
29 ~~to the commission from the remaining candidates in the pool two~~
30 ~~candidates who are registered with the same political party as~~
31 ~~that legislative officer or leader:~~

32 ~~(A) The President pro Tempore of the Senate.~~

33 ~~(B) The minority floor leader of the Senate.~~

34 ~~(C) The Speaker of the Assembly.~~

35 ~~(D) The minority floor leader of the Assembly.~~

36 (2) If an appointment to be made under paragraph (1) by any
37 of the legislative officers or leaders is not made and submitted to
38 the Secretary of State by January 31, that appointment is
39 forfeited and shall be filled pursuant to subdivision (d). In the
40 event that there are two or more minority parties within the

1 Assembly or the Senate, the leader of the largest minority party
2 by statewide party registration shall make the appointment.

3 (c) Any vacancy in the eight commission positions described
4 in subdivision (b) that remains as of March 1 of a year ending in
5 the number one shall be filled from the pool of nominees by the
6 panel of retired judges described in subdivision (a). The panel
7 shall strive for political balance and fairness in making that
8 appointment.

9 (d) At a meeting called by the Secretary of State, the eight
10 commission members appointed pursuant to subdivisions (b) and
11 (c) shall select by majority vote from the nomination pool three
12 additional members who are not registered with any party already
13 represented on the commission. If the eight members fail to
14 appoint one or more of the three additional members within 15
15 days of that meeting, the panel of retired judges described in
16 subdivision (a) shall appoint from the nomination pool, for those
17 positions remaining unfilled, the additional members who are not
18 registered with any party already represented on the commission.
19 One of the three additional members appointed pursuant to this
20 subdivision, as selected by majority vote of the eight members
21 appointed pursuant to subdivision (b), shall serve as the chair of
22 the commission.

23 (e) The 11 members of the commission shall select by
24 majority vote one of their members to serve as the vice chair.

25 (f) The term of office of each member of the commission
26 expires upon the appointment of the first member of the
27 succeeding commission.

28 SEC. 3. (a) After having been served written notice and
29 provided with an opportunity for a response, a member of the
30 commission may be removed by the Governor, with the
31 concurrence of two-thirds of the Senate, for substantial neglect of
32 duty, gross misconduct in office, or inability to discharge the
33 duties of office.

34 (b) (1) If a member of the commission vacates his or her
35 office or is removed pursuant to subdivision (a) prior to the
36 completion of his or her term for any reason, the panel of retired
37 judges described in Section 2 shall nominate a pool of three
38 candidates within the first 30 days after the vacancy occurs.

39 (2) The nominees shall be of the same political party
40 membership, or nonpartisan status, as the case may be, held by

1 the vacating member at the time of his or her appointment. The
2 appointment of the successor member shall be made from the
3 pool of nominees by the person, persons, or entity that, pursuant
4 to subdivision (b), (c), or (d) of Section 2, appointed the member
5 vacating the office, except that a successor appointed pursuant to
6 subdivision (d) of Section 2 under these circumstances is not
7 thereby made the chair of the commission and, in the event of
8 that appointment, a new chair shall be selected by a majority vote
9 of the remaining members.

10 (3) If the appointment of a replacement member is not made
11 within 14 days following the presentation of the nominees, the
12 panel described in Section 2 shall make the appointment, striving
13 for political balance and fairness. The newly appointed member
14 shall serve out the remainder of the original term of the vacating
15 member.

16 SEC. 4. (a) The activities of the commission are subject to all
17 of the following:

18 (1) Six members of the commission, one of whom may be the
19 chair or vice chair, shall constitute a quorum.

20 (2) Six or more affirmative votes shall be required for any
21 official action.

22 (3) The commission shall comply with the Bagley-Keene
23 Open Meeting Act (Article 9 (commencing with Section 11120)
24 of Division 3 of Title 2 of the Government Code), or its
25 successor. The commission shall provide not less than 14 days'
26 public notice for each meeting.

27 (4) The records of the commission pertaining to redistricting,
28 and all data considered by the commission, are public records,
29 open to inspection by members of the public upon request, except
30 that the commission may withhold from public inspection
31 preliminary drafts, notes, and communications between
32 commission members.

33 (5) Any written or verbal communication with any
34 commission member outside of a public hearing, other than by
35 staff or by legal counsel, is prohibited as to any matter on which
36 the commission is required to meet pursuant to paragraph (3).
37 This paragraph does not prohibit any communication between
38 commission members that is otherwise permitted by the
39 Bagley-Keene Open Meeting Act or its successor.

40 (b) The duties of the commission include all of the following:

(1) To establish Senate, Assembly, congressional, and State Board of Equalization districts based on a mapping process for each district that shall consist initially of the creation of districts of equal population ~~in a gridlike pattern~~ across the State.

(2) To adjust the ~~grid districts~~ established pursuant to paragraph (1) as necessary to accommodate each of the following goals, prioritized according to the following order:

(A) Districts shall comply with the United States Constitution. Senate, Assembly, congressional, and State Board of Equalization districts shall each have equal population with other districts for the same office, to the extent practicable.

(B) Districts shall comply with the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following).

(C) Districts shall be geographically contiguous to the extent practicable.

(D) District boundaries shall respect communities of interest to the extent practicable.

(E) To the extent practicable, district lines shall use visible geographic features, city and county boundaries, and undivided census tracts.

(F) Districts shall be geographically compact to the extent practicable.

~~(G) To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals listed in this paragraph.~~

(3) Party registration and voting history data shall be excluded from the ~~initial phase of the mapping process~~ *mapping process described in paragraphs (1) and (2)*, but may be used to test maps for compliance with this subdivision. The places of residence of incumbents or candidates may not be identified or considered ~~for purposes of this article~~ *in the creation of a map pursuant to paragraphs (1) and (2), but maybe considered in establishing the boundaries of final maps pursuant to paragraph (5)*.

(4) The commission shall display a ~~draft map~~ *the map created pursuant to paragraphs (1) and (2)* of Senate, Assembly, congressional, and State Board of Equalization districts to the public for comment, in a manner designed to achieve the widest public dissemination reasonably possible, and public comment shall be taken for at least 30 days from the date of public display.

1 Either the Senate or the Assembly, or both, may act within this
2 period to make recommendations to the commission by majority
3 or by minority report, which recommendations shall be
4 considered by the commission.

5 (5) The commission shall ~~then establish final boundaries, after~~
6 *consideration of public comments and recommendations made by*
7 *the Senate or Assembly pursuant to paragraph (4), establish the*
8 *boundaries of final maps for Senate, Assembly, congressional,*
9 *and State Board of Equalization districts, and shall certify those*
10 *districts to the Secretary of State. The approval of the final*
11 *boundaries shall be by majority vote of the membership of the*
12 *commission, and requires that one or more votes for approval be*
13 *cast by members of the commission registered with each of the*
14 *two largest political parties in California based on party*
15 *registration, and that one or more votes for approval be cast by*
16 *members of the commission not registered with either of these*
17 *two political parties.*

18 SEC. 5. (a) ~~In each year ending in the number nine, the~~
19 ~~Department of Finance or its successor shall submit to the~~
20 ~~Legislature a recommendation for an appropriation adequate to~~
21 ~~In 2009, and annually thereafter, the Governor shall include in~~
22 ~~the Governor's Budget submitted to the Legislature pursuant to~~
23 ~~Section 12 of Article IV an amount of funding sufficient to meet~~
24 ~~the estimated expenses of the subsequent redistricting process~~
25 ~~occurring pursuant to this article, and shall make adequate office~~
26 ~~space available for the operation of the commission.~~
27 ~~Notwithstanding Section 12 of Article IV, the Legislature shall~~
28 ~~make the necessary appropriation by bill passed by rolleall vote~~
29 ~~entered in the journal, a majority of the membership of each~~
30 ~~house concurring. commission. The Legislature shall make the~~
31 ~~necessary appropriation in the annual budget bill.~~

32 (b) The commission, with fiscal oversight from the
33 Department of Finance or its successor, shall have procurement
34 and contracting authority and may hire staff and consultants,
35 exempt from the civil service, for the purposes of this article,
36 including legal representation.

37 (c) The commission has standing in legal actions regarding a
38 redistricting plan and to establish whether funds or other
39 resources provided for the operation of the commission are
40 adequate. The commission has sole authority to determine

1 whether the Attorney General or legal counsel hired or selected
2 by the commission shall represent the people of California in the
3 legal defense of a redistricting plan.

4 (d) (1) The California Supreme Court has original and
5 exclusive jurisdiction in all proceedings in which a redistricting
6 plan adopted by the commission is challenged.

7 (2) To challenge a redistricting plan, any affected elector may
8 file a petition for a writ of mandate or writ of prohibition, within
9 45 days after the commission has certified the plan to the
10 Secretary of State, to bar the Secretary of State from
11 implementing the plan on the grounds that the filed plan violates
12 this Constitution, the United States Constitution, or any federal
13 statute.

14 (3) The court shall act expeditiously on the petition. If the
15 court determines that a redistricting plan adopted by the
16 commission violates this Constitution, the United States
17 Constitution, or any federal statute, the court shall fashion the
18 relief that it deems appropriate.

19 SEC. 6. (a) Members of the commission are eligible for
20 reimbursement of personal expenses incurred in connection with
21 the duties performed for the commission pursuant to law, and a
22 member's residence is deemed to be the member's post of duty
23 for purposes of reimbursement of expenses.

24 (b) The commission may not meet or incur expenses after the
25 redistricting plan becomes final pursuant to paragraph (5) of
26 subdivision (b) of Section 4, except with respect to any pending
27 litigation or government approval concerning the plan, to revise
28 districts if required by court order, or if the number of Senate,
29 Assembly, congressional, or State Board of Equalization districts
30 is changed.

31 (c) For purposes of this article, "day" means a calendar day,
32 except that if the final day of a period within which an act is to be
33 performed is a Saturday, Sunday, or holiday, the period is
34 extended to the next day that is not a Saturday, Sunday, or
35 holiday.

36 (d) This article is self-executing.